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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

JOAN L. MURPHY, et al.,
Appellants

v.

COMMONWEALTH OF PENNSYLVANIA
HUMAN RELATIONS COMMISSION, et al.,
Appellees

On Appeal from the
Supreme Court of Pennsylvania

MOTION TO DISMISS OR AFFIRM OF APPELLEE CROWN CORK AND SEAL COMPANY, INC.

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QUESTION PRESENTED

Whether a complainant's due process or equal protection rights are violated by a State's requirement that a complaint filed under the State's Human Relations Act be filed within 90 days of the alleged discriminatory act.

STATEMENT PURSUANT TO RULE 28.1

Appellee, Crown Cork and Seal Company, Inc., has no parent companies, partially-owned subsidiaries or affiliates.

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MOTION TO DISMISS OR AFFIRM OF APPELLEE CROWN CORK AND SEAL COMPAN

Appellee, Crown Cork and Seal Compa ("Crown Cork"), moves the Court to affirm the ju of the Pennsylvania Supreme Court on the gro the questions on which that court's decision have been decided by this Court and require n briefing or argument.

This Court has repeatedly noted that a Sta Federal Government may establish reasonabl dural requirements with respect to the use of a tory processes. In *Logan v. Zimmerman Brush* U.S. 422 (1982), this Court held that a state terminate a complainant's cause of action in adjudicatory process, solely because of an erro part of a State official, over whom the complai

no control. In so holding, however, this Court specific noted that a State may erect "reasonable procedural quirements" such as a statute of limitations. Similarly *Baldwin County Welcome Center v. Brown*, _____ U.S. _____, 104 S.Ct. 1723 (1984), this Court h that a complainant who wants to begin an action i United States District Court must comply with the F eral Rules of Civil Procedure regarding the nature of complaint and failure to do so is grounds for termina the action.

Here, the court below simply applied this settled to the factual case before it. The appellants here, un the complainant in *Logan*, did not file timely compla in compliance with the Pennsylvania Human Relat Act. The complainants' causes of action, therefore, w not terminated because of any error of a State off over whom they had no control, but by their own d sions not to initiate the process that the State had es lished for them.

This appeal does not present a substantial fed question that this Court has not already answered the contrary, this case is fact specific and sui generis. these reasons, the appeal should be dismissed.

STATEMENT OF THE CASE

A. The Statute at Issue

The statute at issue is the Pennsylvania Hu
lations Act, 43 P.S. §§951-962 ("Act"), which de
claims of unlawful discrimination. The Act p
procedurally, a number of options for bringing a
discrimination. An individual complainant may f
the Pennsylvania Human Relations Commissi
Commission"), his own complaint, charging t
discriminatory practices. 43 P.S. §959(a). Or, t
mission may, "on its own initiative," file a com
"Commissioner's complaint"). 43 P.S. §959(a).
tion, the Act specifically provides that the com
has the option of not using the Act's procedures
stead, pursuing other available remedies (*e.g.*,
Court). 43 P.S. §962(b). Finally, if the complain
elect to file a complaint under the Act, and, if w
year, the Commission dismisses the complain
failed to enter into a conciliation agreement, t
plainant may then pursue any other available r
43 P.S. §962(c).[1]

Where a complaint is filed under the Act
requires that the complaint, whether filed by an
ual or the Commission, "shall set forth the partic
the alleged unlawful discriminatory practice.
§959(a). To be effective, a complaint must be file
90 days after the alleged act of discrimination
§959(g).

After a complaint is filed, the Commission
investigation and, upon a finding that probable

1. If the complainant elects not to use the Act's proc
to seek relief elsewhere (*e.g.*, in State Court), the compl
not later invoke the Act's procedures. 43 P.S. §962(b). C
if the complainant invokes the procedures of the Act, the
ant may not, thereafter, bring an action in State Cou
§962(b). *Fye v. Central Transportation, Inc.*, 487 Pa. 13
2, 4-5 (1979)

ists, the Commission tries by conciliation or otherwise, to eliminate any unlawful discriminatory acts, and if necessary, holds a hearing to determine if there is, in fact, unlawful discrimination. 43 P.S. §959.

If, after the hearing, the Commission makes a finding of discrimination, the Commission has discretion to fashion the remedies that it thinks appropriate for the particular case. 43 P.S. §§959 and 960.

B. The Proceedings Below

The appellants here appeal the decision of the Pennsylvania Supreme *Court, Murphy v. Commonwealth of Pennsylvania Human Relations Commission,* _____ *Pa.* _____, *486 A.2d 388 (1985) (A-87).* That decision affirmed the decision of the Pennsylvania Commonwealth Court, which, in turn, affirmed a decision of the Pennsylvania Human Relations Commission regarding a Commissioner's complaint filed in 1975 against Crown Cork and Local 266 of the Sheet Metal Production Workers (the "Union").[2] To understand the setting of the proceedings, however, requires an explanation of the facts going back to 1970.

In February of 1970, eleven female employees of Crown Cork went to the Commission to complain about discrimination they felt existed, with the acquiescence of the Union, at the company. Although the representative of the Commission explained to the women the method for filing a complaint with the Commission, not one of the women chose to file and sign a complaint. (A-118.)[3]

In December 1970, the Commission, on its own motion, filed a Commissioner's complaint against Crown

2. The Pennsylvania Commonwealth Court decision is reported at 77 Pa. Cmwlth. Ct 291 (1983). The decision of the Commission is unreported but is reproduced in appellant's Appendix at A-1 and A-57.

3. In April 1970, one woman Mary Martin did file an individual complaint, but withdrew it in October 1970. That complaint thereafter had no legal significance.

Cork and the Union. This complaint consisted of just tw pages and made only general allegations of "unlawf employment practices" with no mention of individu complainants.

An individual complaint was also filed (in Ju 1970) by Elizabeth McNasby. Along with the individu allegations, the McNasby complaint also had a sing sentence reference to treatment of "other females" Crown Cork.

In October 1974, while the Commissioner's co plaint and the McNasby complaint were pending, t Pennsylvania Supreme Court issued its opinion in *Pen sylvania Human Relations Commission v. United Sta Steel Corp.*, 458 Pa. 559, 325 A.2d 910 (1974) ("*U Steel*"). In *U.S. Steel*, the Pennsylvania Supreme Co held that a Commissioner's complaint which only sta general allegations of discriminatory acts failed to sati the "particularity" requirement of the Act and w therefore, invalid.

In response to the *U.S. Steel* decision (where complaint struck down was almost identical to the 19 Commissioner's complaint here), the Commission, October 1975, filed a new, 34-page complaint (styled "amended complaint") against Crown Cork and the U ion. The new Commissioner's complaint contained tailed class-wide charges and charges of 13 named dividuals. Prior to the hearing, Crown Cork moved to miss the 1975 complaint on the ground that, because 1970 Commissioner's complaint was invalid due to l of particularity, there could be no amendment to it.

After 37 days of hearing and 6,000 pages of tr script, the Commission issued its decision in Septem 1981 (and a supplemental opinion on May 19, 198 The Commission concluded that: the 1 Commissioner's complaint was a nullity because of l of particularity, and, therefore, did not toll the statut limitations; the 1971 McNasby complaint was su

ciently particular as an individual complaint, but not a class complaint; and the 1975 Commissioner's complaint was effectively an original complaint.

The Commission, pursuant to its discretionary power to fashion relief, ordered extensive relief, including monetary relief for McNasby and females employed at the Company from July 31, 1975, to December 31, 1975. However, because the December 1975 Commissioner's complaint was the first tolling of the Act's 90-day statute of limitations, only one of the individuals named in the 1975 complaint was entitled to relief. (A-1 and A-57.) Nine of the remaining individual complainants, along with Ms. McNasby, appealed to the Pennsylvania Commonwealth Court and then the Pennsylvania Supreme Court and are appellants here.

In the Pennsylvania Supreme Court, appellants raised a whole panoply of reasons why the Commonwealth Court's decision (and the Commission's decision) should be reversed. They argued, among other things, that the 1970 Commissioner's complaint should have tolled the statute of limitations; that the 1975 complaint should be deemed to date back to 1970; that Crown Cork and the Union waived the statute of limitations argument; that a "continuing violation" should have been found. The Pennsylvania Supreme Court reviewed each alleged error and affirmed.

In particular, the Pennsylvania Supreme Court considered the question raised here, *i.e.*, whether this Court's decision in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), suggested that the application of the Pennsylvania Human Relations Act to the individual complainants here deprived them of their federal constitutional rights. The Pennsylvania Supreme Court held that while it certainly had no quarrel with the wisdom of *Logan*, that decision was inapplicable for the simple reason that, unlike *Logan*, the individual complainants here (except for McNasby) did not preserve their rights by filing individual complaints. (A-95.)

The Pennsylvania Supreme Court observed that, in *Logan*, the majority had specifically stated, 455 U.S. at 437, that:

> "The State may erect reasonable procedural requirements for triggering the right to an adjudication, [such as] statutes of limitation . . . . And the State certainly accords *due* process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule."
> (Emphasis in original.)

The Pennsylvania Supreme Court also considered and rejected the appellants' claim that they had an "interest" in the Commissioner's complaint. In rejecting this argument, the Court noted that, under Pennsylvania law, a Commissioner's complaint, unlike an individual complaint, is for "the public interest" and is filed on behalf of the Commonwealth. A particular individual may, by coincidence, benefit from a Commissioner's complaint, but he does not have an "interest" in it. (A-96.)

The Pennsylvania Supreme Court similarly considered and rejected the other contentions raised here by appellants. The court below noted that proceedings before the Commission are strictly governed by statute and the Act specifies the type of complaint necessary to initiate an action and to toll the statute of limitations. The complainants, the court below observed, "do not seriously contend" that the 1970 Commissioner's complaint met the Act's particularity requirement. The 1970 Commissioner's complaint was, therefore, a nullity and could not invoke the Commission's jurisdiction, toll the statute of limitations, or be "amended." (A-93 and 94).

The remaining issues raised by appellants, as the court below recognized, questioned matters that fell within the Commission's discretion. The court below reviewed each issue and found no abuse of discretion. (A-94 - A-97.)

ARGUMENT

I. THE DECISION BELOW IS ENTIRELY CONSISTENT WITH THIS COURT'S DECISIONS IN *LOGAN* AND *BALDWIN COUNTY*

In *Logan*, this Court held that a State could not, consistent with due process, terminate a complainant's cause of action under the State's Employment Practices Act solely because a state official, for reasons beyond the complainant's control, failed to comply with a statutorily mandated procedure. There, the complainant (Logan) complied with the State Act's requirements, but a state official failed to schedule a hearing within the 120 days permitted by the Act. This Court held that Logan had a property right to use the State Act's adjudicatory procedures, and the State violated Logan's due process rights by terminating his cause of action under the Act because of an error on the State's part.

In *Logan*, the majority opinion specifically noted, however, that:

> "This is not to suggest, of course, that the State must consider the merits of the claim when the *claimant* fails to comply with a reasonable procedural requirement, or fails to file a timely charge."

455 U.S. at 434 n. 7. (Emphasis in original.)

This Court went on to state:

> "The State may erect reasonable procedural requirements for triggering the right to an adjudication, be they statutes of limitations . . . or, in an appropriate case, filing fees . . . . And the State certainly accords *due* process when it terminates a claim for failure to comply with a reasonable procedural or evidentiary rule."

455 U.S. at 437. (Emphasis in original.)

See Baldwin County Welcome Center v. Brown, _____ U.S. _____, 104 S.Ct. at 1726. (Failure to file adequate complaint in District Court was proper ground for terminating action. "Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants.")

The situation here fits exactly the Court's observation in *Logan* regarding reasonable procedural requirements. The appellants decided, for their own reasons, not to file timely complaints under the Act, even though they were specifically told of their right to do so. They were not denied due process. They simply chose not to invoke, within the statute of limitations period, the process that Pennsylvania had set up for claims of discrimination.

Appellants' claim of an equal protection violation fails for the same reason. The only distinction drawn by the Act, in this regard, is between those complainants who file timely complaints and those who do not. Such a distinction, which is based on the *complainant's* own action or inaction, is obviously one that rationally advances a reasonable and identifiable governmental objective. *Schweiker v. Wilson*, 450 U.S. 221, 235 (1981).

In an attempt to obscure the simple fact that they failed to file complaints (and to try to force this case within the *Logan* mold), appellants argue that they have an interest in the Commissioner's complaint. They then say the invalidity of the 1970's Commissioner's complaint, due to lack of particularity, violated their due process rights.

Under the Act, however, a Commissioner's complaint, while it may benefit particular persons, is filed on behalf of the Commonwealth in order to vindicate the public interest. *Murphy, supra*, 486 Pa. at 393 (A-96). A complainant has no right to force the Commission to file a Commissioner's complaint — just as a complainant

with the EEOC has no right to force the EEOC to sue. *See General Telephone Co. v. EEOC*, 446 U.S. 318, 326 (1980) (EEOC action "albeit at the behest of and for the benefit of specific individuals," is not a representative action and does not supplant or replace the private action.)

Here, the Act gives the complainant a whole series of options: he can file his own complaint under the Act; he can pursue remedies outside the Act; he can ask the Commission to investigate; he can even file a complaint under the Act, and, if it is dismissed or no conciliation agreement is entered, he can then pursue other remedies. Under these circumstances, to the extent that appellants had any "interest" in the Commissioner's complaint, it certainly does not rise to the level of a due process interest.

Furthermore, even assuming the appellant's could somehow piggyback on the Commissioner's complaint, the simple fact is — as appellants recognize — that the 1970 Commissioner's complaint lacked the particularity required by the Act. In 1974 the Pennsylvania Supreme Court specifically held, in *U.S. Steel*, that the Act's requirement of particularity for complaints meant what it said. That decision in *U.S. Steel* is identical (but for the different forum) to this Court's decision in *Baldwin County*.

Grasping at straws, appellants suggest they were misled in February 1970 into believing that only one woman had to sign a complaint and that that somehow puts this case into the *Logan* mold. Again, appellants try to blush over the irrefutable facts: (1) in February 1970, the women were told of their right to sign and file complaints (A-118); and (2) none did.[4] The one-sentence ref-

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4. Two months later, in April 1970, Mary Martin filed a complaint, but that complaint was withdrawn and thereafter had no legal significance. The 1971 McNasby complaint, like the 1970 Commissioner's complaint, had only a general, half-sentence reference to other women and, lacking particularity, was a nullity, apart

erence on which appellants rely (which is ambiguous, directed at the Union, and may well have been made with respect to a Commission investigation) cannot overcome these simple facts.

II. THE PROVISIONS OF THE ACT ARE NOT ARBITRARY OR IRRATIONAL

As a last ditch effort, appellants claim that they were arbitrarily and irrationally denied access to the proper forum because of: (i) the particularity requirement of the Act; (ii) the failure to treat the 1975 Commissioner's complaint as an amendment to the 1970 Commissioner's complaint; (iii) the failure to hold that Crown Cork waived its right to attack the particularity of the 1970 complaint; and (iv) failure of the Commission to rule otherwise because of alleged lack of prejudice to Crown Cork.

The first of these claims is just a repeat of an earlier argument and, as explained, is squarely answered by *Baldwin County*, where this Court held that a particularity requirement for a complaint is a proper and valid procedural requirement. The other three matters listed above, (ii)-(iv), are all matters within the discretion of the Commission and were considered by the Commission, the Commonwealth Court and the Supreme Court.

III. THIS CASE IS FACT SPECIFIC, SUI GENERIS AND DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

Although appellants have labeled this a direct appeal under 28 U.S.C. §1257(2), it is not. While the appellants talk about the constitutionality of the Act, they are really arguing that their rights will be violated if the Act — and, in particular, its statute of limitations — is applied to them. The appellants would have no complaints with the

from its allegations regarding Ms. McNasby. Appellants can have no "interest" in either of these individual complaints.

Act if they could be excused from the statute of limitations provision.

Furthermore, even if this case is deemed a direct appeal under §1257(2), it does not present a substantial federal question, but rather, the decision below just affirms settled law. In *Logan*, this Court specifically addressed the issue of State procedural requirements and stated that such requirements were proper and failure to follow them was a proper ground for terminating a claim. Again, in *Baldwin County*, this Court dealt with an analogous situation regarding the federal court rules for a complaint and again held that failure to follow the rules was a proper basis for terminating a claim.

Nor is this a proper case in which to grant a petition for a writ of certiorari. This case is fact specific and sui generis. This case only exists because these appellants failed to protect their own interests by filing complaints, and in 1974 the Pennsylvania Supreme Court, in *U.S. Steel*, held that the particularity requirement in the Act means exactly what it says. This case presents no broad issues of general constitutional application, but rather, is just the result of the timing of the Pennsylvania Supreme Court's decision in *U.S. Steel* and, more important, these appellants' own failure to invoke a process that was there all along.

CONCLUSION

This case does not present any substantial federal questions that this Court has not already answered. To the contrary, the court below applied well-settled law, and in particular this Court's decision in *Logan*, to the particular facts before it.

Unlike Mr. Logan, the appellants here have not been denied due process or equal protection for the simple reason that they chose, for whatever reasons, not to invoke the available State procedure. They were not denied access to any process. They chose not to invoke the process

under the Act (even though they were specifically told of their right to file complaints) or to pursue other available remedies.

Appellants' attempt to piggyback on the 1970 Commissioner's complaint fails because (i) such a complaint is discretionary and for the public good and not intended to supplant individual complaints, and (ii) that complaint was, in any case, a nullity because it lacked particularity, a reasonable procedural requirement. *Baldwin County*.

Finally, the grab-bag of alleged errors that appellants have lumped together in "Question 3" are simply questions of whether the Commission abused its discretion in this particular case. These are case specific and certainly raise no substantial federal question.

Respectfully submitted,

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